

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LAWS/ALLEN-WALDEN,
Minors.

UNPUBLISHED

June 19, 2014

No. 318463
Wayne Circuit Court
Family Division
LC No. 06-457447-NA

In the Matter of LAWS/ALLEN-WALDEN.
Minors.

No. 318466
Wayne Circuit Court
Family Division
LC No. 06-457447-NA

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother and respondent-father separately appeal by right the trial court's orders terminating their parental rights to the minor children. The court terminated both parents' rights under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), (j), (k)(iii), (k)(iv), and (k)(v), and also terminated respondent-father's rights under § 19b(3)(l). Because we conclude there were no errors warranting relief, we affirm in both dockets.

The trial court initially took jurisdiction over the three oldest children—DL and twins AEW and ASW—in 2011 after it found that the children were living in unsuitable housing. The trial court refused to terminate respondents' parental rights at the initial dispositional hearing; instead, it ordered them to participate in reunification services. The trial court later took jurisdiction over respondents' newborn children, twins NIW and NAW, who were born in September 2011, and JW, who was born in October 2012. The Department of Human Services at first placed the children in foster care or relative custody, but returned them to respondents' care while respondents participated in reunification services.

In November 2012, 14-month-old NIW was brought to an emergency room where she was diagnosed with hypoxic brain injury, two bilateral subdural hematomas of differing ages, and extensive retinal hemorrhaging in both eyes. Respondents, who had been NIW's sole caregivers since August 2012, were unable to offer a medically reasonable explanation for the injuries, which Dr. Mary Lu Angelilli, a specialist in child abuse, attributed to non-accidental

head trauma caused by violent shaking. The Department thereafter filed a supplemental petition to terminate respondents' parental rights to all the children, which the trial court granted.

On appeal, both respondents argue that the trial court clearly erred when it found that the Department proved by clear and convincing evidence that a statutory ground for termination existed. The Department has the burden to prove the existence of a statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews a trial court's finding that a statutory ground exists for clear error. MCR 3.977(K). A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Under § 19b(3)(b), a trial court may terminate a parent's parental rights to a child if the parent caused a physical injury to the child or his or her sibling or had the opportunity to prevent the injury to the child or his or her sibling and failed to do so and there is a reasonable probability that the child will suffer injury or abuse if placed in the parent's home. MCL 712A.19b(3)(b)(i) and (b)(ii). Similarly, a trial court may terminate a parent's parental rights under MCL 712A.19b(3)(k) where the parent abused the child or the child's sibling and the abuse including, in relevant part, severe physical abuse, serious impairment of an organ or limb, or a life-threatening injury. A trial court may also terminate a parent's parental rights if the "parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age," MCL 712A.19b(3)(g), or if there "is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent," MCL 712A.19b(3)(j).

The Department presented evidence that NIW sustained a constellation of severe, life-threatening injuries, which could not be explained by accidental trauma or a medical condition. The Department's experts further opined that NIW's injuries were consistent with intentional child abuse.

Expert testimony established that, given the nature and extent of the injuries, the injuries were caused by a rapid acceleration and deceleration, such as might occur in a high-speed automobile accident, a fall from a height of at least two stories, or violent shaking. Respondents had been NIW's only caregivers since her return from foster care in August 2012, and they admitted that she had not been involved in a serious car accident. Although respondents reported that NIW fell forward while in a crawling position, the medical experts agreed that the injuries could not have been caused by such a fall. NIW did not have other injuries consistent with an automobile collision or a fall, such as bruises, and the extent of retinal hemorrhaging was much greater than would be expected from an accidental cause. Additionally, the presence of two subdural hematomas of different ages suggested that the injuries were caused on more than one occasion. Testimony also ruled out metabolic and bleeding disorders as possible explanations for the injuries. The experts similarly rejected respondents' suggestions that a molding helmet, developmental delays, a light knock on the head, or formula feeding, might have caused the injuries. Thus, the only remaining cause was intentional, violent shaking. Testimony also discredited respondents' suggestion that the injuries could have been caused by a seven-year-old sibling, because a child of that age and strength could not exert the force necessary to cause the

head injuries. Dr. Angelilli testified that the degree of force necessary to cause the injuries was great enough that the abuser would recognize the danger to the child.

This evidence supports the trial court's finding that either respondent or both caused NIW's severe injuries by violently shaking her and that either or both failed to protect her. We disagree with respondent-mother's contention that the trial court was merely speculating when it found that she or respondent-father abused the child because it was equally possible that NIW was injured in her foster home. The evidence established that NIW left foster care in August 2012—three months before her head injuries were diagnosed. There was no evidence that NIW suffered such severe injuries without anyone noticing for a period of months. Indeed, both respondents testified that they recognized that something was seriously wrong with NIW on the morning of November 21, 2012. None of the medical experts offered the opinion that the injuries could have occurred months before they manifested on November 21. The trial court did not clearly err when it found that one or both respondents were responsible for NIW's injuries.

The evidence that one or both respondents abused NIW by violently shaking her, and that the other failed to protect NIW, coupled with evidence that both respondents failed to benefit from services and failed to accept responsibility for NIW's injuries, supports the trial court's decision to terminate both respondents' parental rights under §§ 19b(3)(b)(i), (b)(ii), (g), (j), (k)(iii), (k)(iv), and (k)(v). The evidence that at least two events caused NIW's injuries, and that neither respondent sought medical attention for NIW before the second injury, strongly supports the trial court's finding that termination was warranted under §§ 19b (3)(b)(i) and (b)(ii). These facts also support termination under subsection § 19b(3)(g), which involves a parent's inability to provide proper care and custody, and § 19b(3)(j), which examines whether there is a reasonable likelihood the child will be harmed if returned to respondents' home. Regarding § 19b(3)(k), Dr. Angelilli testified that the perpetrator of the abuse shook the child so violently that he or she would have known the danger to a child, and the injuries sustained by NIW clearly amounted to severe physical abuse. There was also testimony that NIW may never fully recover from her brain injury. The injury was also life-threatening, as established by testimony that she might have died from the brain pressure without surgery to drain the collection of blood. The fact that the trial court was unable to determine which respondent committed the abuse did not preclude termination of both respondents' parental rights where the evidence established that respondents were NIW's only caregivers and that one or both of the respondents committed the abuse and the other respondent failed to protect the child. See *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011).

Further, although the evidence did not show that respondents abused the other children, the trial court did not clearly err in finding that "the other children may be exposed to the same abuse and the parents will be unable to protect those children from that abuse." The trial court was entitled to rely on the doctrine of anticipatory abuse or neglect to find that respondents' conduct toward NIW was probative of how they would treat the other children. *In re HRC*, 286 Mich App 444, 460-461; 781 NW2d 105 (2009).

Because the trial court did not err when it found that the Department had proved these statutory grounds for termination by clear and convincing evidence, we need not address whether the trial court also properly found grounds for termination under §§ 19b(3)(c)(i) or (l). Any error in those findings would not warrant relief. See *In re Powers*, 244 Mich App 111, 118; 624

NW2d 472 (2000). The trial court did not clearly err when it found that a statutory ground for termination was established by clear and convincing evidence with respect to each respondent.

Respondent-mother also argues the trial court clearly erred when it found that termination of her parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in the child's best interests is to be determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Because the evidence established that NIW's injuries resulted from intentional abuse by at least one of her parents, and because the children would be at a continued risk of harm if returned to respondents, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

There were no errors warranting relief.

Affirmed.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly